

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ALFONZO WALKER, #270 727,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:16-CV-187-ECM
)	[WO]
PATRICIA ARNOLD,)	
)	
Defendant.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

On August 23, 2018, Plaintiff filed a motion to dismiss the complaint which the court considers a motion for voluntary dismissal without prejudice under Federal Rule of Civil Procedure Rule 41(a). Upon consideration of Plaintiff's motion to dismiss, the court concludes that the motion is due to be granted. Furthermore, the court concludes this case should be dismissed without prejudice. *See* F. R. Civ. P. 41(a)(2).

A voluntary dismissal under Rule 41(a)(2) is committed to the sound discretion of this court, and should be granted "unless the defendant will suffer clear legal prejudice." *McCants v. Ford Motor Co., Inc.*, 781 F.2d 855, 857 (11th Cir. 1986). Simple litigation costs, inconvenience to a defendant, and the prospect of a second or subsequent lawsuit do not constitute clear legal prejudice. *See id.*; *Goodwin v. Reynolds*, 757 F.3d 1216, 1219 (11th Cir. 2014).

The court has carefully reviewed the file and determined that even if Defendant was given an opportunity to file a response to Plaintiff's motion to dismiss, she could not demonstrate the existence of clear legal prejudice. Consequently, the court concludes this case should be dismissed without prejudice on motion of Plaintiff.

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that:

1. Plaintiff's Motion to Dismiss (Doc. 74) be GRANTED.
2. This case be DISMISSED without prejudice.
3. No costs be taxed.

It is further

ORDERED that **on or before September 7, 2018**, the parties may file an objection to this Recommendation. Any objection filed must specifically identify the factual findings and legal conclusions in the Magistrate Judge's Recommendation to which a party objects. Frivolous, conclusive or general objections will not be considered by the District Court.

Failure to file a written objection to the proposed findings and recommendations in the Magistrate Judge's report shall bar a party from a *de novo* determination by the District Court of factual findings and legal issues covered in the report and shall "waive the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions" except upon grounds of plain error if necessary in the interests of justice. 11th Cir. R. 3-1; *see Resolution Trust Co. v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11th Cir. 1993); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989).

Done, this 24th day of August 2018.

/s/ Wallace Capel, Jr.
CHIEF UNITED STATES MAGISTRATE JUDGE